



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 05-21

SUBJECT: SANDRA TIFFANY
NEVADA STATE SENATOR

NOTE: During the May 12, 2005 meeting of the Nevada State Senate Committee on Judiciary, several State Senators expressed concerns that comments made in March, 2005 by the Commission's Executive Director to the media concerning the conduct of Senator Tiffany tended to give the appearance that the Executive Director could not objectively investigate an ethics complaint regarding Senator Tiffany's conduct, should such a complaint have been filed with the Nevada Commission on Ethics. Due to these concerns, the Executive Director removed herself completely from the investigation of this complaint and, pursuant to NRS 281.4635(1)(c) and NRS 281.4635(2)(c), delegated the investigation in its entirety to the Commission's investigator. The following recommendation regarding just and sufficient cause has been prepared based on evidence gathered, analysis performed, and application of Nevada ethics law by the Commission investigator.

A. JURISDICTION:

Sandra Tiffany (hereinafter "Tiffany") is a public officer as defined by NRS 281.4365. As such, the Commission has jurisdiction over the complaint.

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion 05-21 (Tab B)
- Reviewed subject's response dated May 2, 2005 (Tab C)
- Prepared timeline of events (Tab D)
- Reviewed Senate Bill 55 of the 2005 Nevada Legislature (Tab E)

- Interview State Purchasing personnel: Greg Smith, Administrator of Purchasing Division; Mike Kuckenmeister, Chief of Materials Management Section; Kimberlee Tarter, Chief of Department of Administration Purchasing Division.
- Interviewed Troy Dillard, DMV Administrator for Compliance Enforcement Division.
- Conducted telephonic interviews of numerous staff members from unclaimed/surplus property departments in various states.
- Conducted telephonic interview with Nevada State Treasurer Brian Krolicki
- Conducted telephonic interview with Nevada Deputy State Treasurer Brad Lawrence
- Conducted telephonic interview with Nevada Senior Deputy State Treasurer Pat Foley
- Conducted telephonic interview with City of North Las Vegas Purchasing Manager Dwight Rawlinson.
- Gathered documents from City of Henderson, City of North Las Vegas, and Nye County.

C. RECOMMENDATIONS:

1. It is recommended that the panel find just and sufficient cause **EXISTS** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:
 - NRS 281.481(2);
 - NRS 281.481(5); and
 - NRS 281.481(10).

SPECIFIC REASON:

Sufficient credible evidence exists to support a finding of just and sufficient cause for the Commission to hear the matter and render an opinion on whether the subject of the complaint violated the above provisions of NRS Chapter 281.

2. It is recommended that the panel find just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:
 - NRS 281.505

SPECIFIC REASON:

Sufficient credible evidence does not exist to support a finding of just and sufficient cause for the Commission to hear the matter and render an opinion on whether the subject of the complaint violated the above provision of NRS Chapter 281.

D. SUMMARY OF REQUEST FOR OPINION:

The request for opinion alleges violations by Tiffany of NRS 281.505, NRS 218.605, and NRS 281.481(2).

The requester alleges that Tiffany violated NRS 281.505 which states in part, “[e]xcept as otherwise provided in this section and NRS 281.555 and 332.800, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any private business in which he has a significant pecuniary interest.”

Tiffany allegedly violated this provision when she entered into a contract with the State of Nevada Purchasing Division (“State Purchasing”) and the City of North Las Vegas to sell unclaimed property and surplus vehicles on behalf of the government entities through Tiffany’s private company Stockdales Property Auctions (“Stockdales”).

Further, requester alleges that the contract between Tiffany and State Purchasing was a no-bid contract in violation of NRS 218.605, which prohibits legislators from entering into contracts unless they meet the statutory requirements.

Requester also alleges that Tiffany used her position as State Senator, in violation of NRS 281.481(2), to attempt to change the law to benefit her and her company by introducing Senate Bill 55 (“SB 55”). If passed, SB 55 would make it legal for Tiffany to sell vehicles without being licensed as a broker or dealer.

In addition to the above allegations, pursuant to NAC 281.189¹ the Executive Director may investigate relevant issues and facts beyond those presented in this ethics complaint.

E. SUMMARY OF SUBJECT’S RESPONSE:

As to the contract with State Purchasing:

In her response, Tiffany states that although NRS 218.605 and NRS 281.505 prohibit legislators from entering into contracts with the State and local governments, there are some exceptions to this prohibition. One of these exceptions allows a legislator to enter

¹ NAC 281.189 permits the Executive Director to investigate relevant issues and facts beyond those presented in an ethics complaint when determining in her written recommendation whether just and sufficient cause exists for the Commission to render an opinion on the ethics complaint.

into a contract with a governmental agency where all of the following are met: (1) the sources of supply of the service are limited; (2) the contracting process is controlled by rules of competitive bidding; (3) the legislator has not taken part in developing the contract plans or specifications; and (4) the legislator will not be personally involved in opening, considering or accepting any of the bids for the contract.²

With regard to requirement number two above, that the contracting process is to be controlled by rules of competitive bidding, Tiffany argues that the Commission recently interpreted this requirement to be inapplicable if there is another statute that otherwise authorizes the contract without advertising for bids.³ Tiffany argues that NRS 284.173 is the other statute that otherwise authorizes her contract without being subject to the competitive bidding process.

Under NRS 284.173 a contract for services with an independent contractor must be awarded pursuant to the State Purchasing Act (Chapter 333 of NRS), *except as otherwise provided by specific statute*. Tiffany argues that Nevada Administrative Code (NAC) 333.150 specifically allowed her to be awarded the state contract without having to submit a bid. The regulation provides that a contract for services that may only be contracted from a “sole source,” as determined by the chief of that department, is not subject to the requirements of competitive bidding. The chief of State Purchasing, Greg Smith, determined that Tiffany was a “sole source” and thus, was not subject to the competitive bidding requirement.

As to the contract with the City of North Las Vegas:

With regard to Tiffany’s contract with the City of North Las Vegas, Tiffany argues that NRS 281.505 bidding requirements are inapplicable because another specific statute, specifically NRS 332.039 or 332.115 authorizes the award of the contract without the competitive bidding process.

NRS 332.039 allows a local government to enter into a purchasing contract for which the estimated cost is \$25,000 or less without the bidding process. Further, she argues that NRS 332.115 authorizes contracts for items that may only be contracted from a sole source without having to go through competitive bidding.

As to SB 55:

With regard to the allegation that Tiffany attempted to use her position in government to her benefit by introducing SB 55, Tiffany responds that Subsection 7 of NRS 281.501⁴

² See NRS 218.605(2)(a) and NRS 281.505(4).

³ See *Matter of Harris*, NCOE Opinion No. 02-08 (Tab F).

⁴ NRS 281.501 Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure. Subsection 7 states: The provisions of this section do not, under any circumstances:

- (a) Prohibit a member of the legislative branch from requesting or introducing a legislative measure; or
- (b) Require a member of the legislative branch to take any particular action before or while requesting or introducing a legislative measure.

specifically allows her to introduce legislation that may benefit her or her private business.

As to additional allegations pursuant to NAC 281.189:

Tiffany was given an opportunity to reply to the additional relevant issues and facts, beyond those presented in the ethics complaint, that were discovered during the investigation of this Request for Opinion and that will be considered by the Commission Panel. Tiffany declined to submit a reply to the additional issues.

F. PERTINENT STATUTES AND REGULATIONS:

Nevada Revised Statutes

NRS 218.605 Contract in which Legislator has interest: Prohibitions; exceptions; penalties.

1. Except as otherwise provided in subsection 2, it is unlawful for any member of the Legislature to:

(a) Become a named contractor or named subcontractor under any contract or order for supplies or any other kind of contract paid for in whole or in part by money appropriated by the Legislature of which he is a member for the State or any of its departments, or the Legislature or either of its houses, or to be interested, directly or indirectly, as principal, in any kind of contract so paid.

(b) Be interested in any contract made by the Legislature of which he is a member, or be a purchaser or interested in any purchase or sale made by the Legislature of which he is a member.

2. Any member of the Legislature may:

(a) Sell or enter into a contract to sell, to the State or any of its departments any item, commodity, service or capital improvement, if:

(1) The sources of supply for the item, commodity, service or capital improvement are limited;

(2) The contracting process is controlled by rules of open competitive bidding;

(3) He has not taken part in developing the plans or specifications for the sale or contract; and

(4) He will not be personally involved in opening, considering or accepting any bids for the sale or contract.

(b) If he is not named in a contract, receive, as direct salary or wages, compensation for which the original source was a legislative appropriation to any governmental entity or a private entity not owned or controlled by the Legislator.

(c) Receive, for services as an instructor or teacher from any county school district or the University and Community College System of Nevada, compensation for which the original source was a legislative appropriation to any governmental entity or a private entity not owned or controlled by the Legislator.

3. Any contract made in violation of subsection 1 may be declared void at the instance of the state or of any other person interested in the contract except the member of the Legislature prohibited in subsection 1 from making or being interested in the contract.

4. Any person violating subsection 1 is guilty of a gross misdemeanor and forfeits his office.

NRS 332.039 Advertisements or requests for bid on contract.

1. Except as otherwise provided by specific statute:

(a) A governing body or its authorized representative shall advertise all contracts for which the estimated amount required to perform the contract exceeds \$25,000.

(b) A governing body or its authorized representative may enter into a contract of any nature without advertising if the estimated amount required to perform the contract is \$25,000 or less.

(c) If the estimated amount required to perform the contract is more than \$10,000 but not more than \$25,000, requests for bids must be submitted by the governing body or its authorized representative to two or more persons capable of performing the contract, if available. The governing body or its authorized representative shall maintain a record of all requests for bids and all bids received for the contract for at least 7 years after the date of execution of the contract.

* * * * *

NRS 332.115 Contracts not adapted to award by competitive bidding; purchase of equipment by local law enforcement agency or local fire department; purchase of goods commonly used by hospital.

1. Contracts which by their nature are not adapted to award by competitive bidding, including contracts for:

(a) Items which may only be contracted from a sole source;

(b) Professional services;

(c) Additions to and repairs and maintenance of equipment which may be more efficiently added to, repaired or maintained by a certain person;

(d) Equipment which, by reason of the training of the personnel or of an inventory of replacement parts maintained by the local government is compatible with existing equipment;

(e) Perishable goods;

(f) Insurance;

(g) Hardware and associated peripheral equipment and devices for computers;

(h) Software for computers;

(i) Books, library materials and subscriptions;

(j) Motor vehicle fuel purchased by a local law enforcement agency for use in an undercover investigation;

(k) Motor vehicle fuel for use in a vehicle operated by a local law enforcement agency or local fire department if such fuel is not available within the vehicle's assigned service area from a fueling station owned by the State of Nevada or a local government;

(l) Purchases made with money in a store fund for prisoners in a jail or local detention facility for the provision and maintenance of a canteen for the prisoners;

(m) Supplies, materials or equipment that are available pursuant to an agreement with a vendor that has entered into an agreement with the General Services Administration or another governmental agency located within or outside this state;

(n) Items for resale through a retail outlet operated in this state by a local government or the State of Nevada;

(o) Commercial advertising within a recreational facility operated by a county fair and recreation board; and

(p) Goods or services purchased from organizations or agencies whose primary purpose is the training and employment of handicapped persons,

↪ are not subject to the requirements of this chapter for competitive bidding, as determined by the governing body or its authorized representative.

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NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

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2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281.501.⁵

(b) “Unwarranted” means without justification or adequate reason.

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5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.

⁵ NRS 281.501(8) states: As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person:

(a) Who is a member of his household;

(b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;

(c) Who employs him or a member of his household;

(d) With whom he has a substantial and continuing business relationship; or

(e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

* * * * *

10. A public officer or employee shall not seek other employment or contracts through the use of his official position.

NRS 281.501 Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.

* * * * *

7. The provisions of this section do not, under any circumstances:

- (a) Prohibit a member of the legislative branch from requesting or introducing a legislative measure; or
- (b) Require a member of the legislative branch to take any particular action before or while requesting or introducing a legislative measure.

* * * * *

NRS 281.505 Contracts in which public officer or employee has interest prohibited; exceptions.

1. Except as otherwise provided in this section and NRS 281.555 and 332.800, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any private business in which he has a significant pecuniary interest.

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by such board or commission, may, in the ordinary course of his business, bid on or enter into a contract with any governmental agency, except the board, commission or body of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

* * * * *

4. A public officer or employee, other than an officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers. If a public officer who is authorized to bid on or enter into a contract with a governmental agency pursuant to this subsection is a member of the governing body of the agency, the public officer, pursuant to the requirements of NRS 281.501, shall disclose his interest in the contract and shall not vote on or advocate the approval of the contract.

NRS 284.173 Definition; contracts for services.

1. Elective officers and heads of departments, boards, commissions or institutions may contract for the services of persons as independent contractors. Except as otherwise provided by specific statute, each contract for services must be awarded pursuant to the provisions of chapter 333 of NRS.

* * * * *

Nevada Administrative Code

NAC 333.150 Requirements for contract for services of independent contractor; competitive selection; request for proposals; effective date. (NRS 333.130, 333.135)

1. Except as otherwise provided by specific statute, a contract entered into pursuant to NRS 284.173 for the services of an independent contractor must:

- (a) Be awarded pursuant to the provisions of this chapter and chapter 333 of NRS;
- (b) Conform to the form, terms and conditions prescribed by the attorney general; and
- (c) Include any provisions related to insurance that the state risk manager determines are required.

2. Such a contract which by its nature is not adapted to be awarded by competitive selection, including, without limitation, a contract for:

- (a) Services which may only be contracted from a sole source as determined by the chief;
- (b) Professional services, including, without limitation, a contract for the services of:
 - (1) An expert witness;
 - (2) A professional engineer;
 - (3) A registered architect;
 - (4) An attorney;
 - (5) An accountant; or
 - (6) Any other professional, if the services of that professional are not adapted to competitive selection as determined by the chief; or
- (c) Services necessitated by an emergency affecting the national defense or an emergency caused by an act of God or any other unforeseeable circumstances, as determined by the chief,

is not subject to the requirements of this chapter and chapter 333 of NRS for competitive selection.

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NAC 281.189 Scope of investigation by Executive Director. The Executive Director may investigate relevant issues and facts beyond those presented in an ethics complaint in determining his written recommendation of whether just and sufficient cause exists for the Commission to render an opinion on the ethics complaint.

G. RESULTS OF INVESTIGATION:

Sandra Tiffany has served in the Nevada Legislature since 1993, first in the Assembly and then in the Senate after 2003. Tiffany is also the president of Stockdales Property Auctions, LLC., an Internet company specializing in online auctions for state unclaimed property and surplus property.

Nevada's unclaimed property is administered by the Nevada State Treasurer. As the administrator of unclaimed property, the Nevada Treasurer is charged with auctioning the unclaimed items from the state's safe deposit boxes. In the past, live auctions were conducted on an annual basis. In an attempt to update this auction method, Treasurer Brian Krolicki in November of 2003 launched an auction of the state's unclaimed property on eBay. The auction program was a one-time program and lasted approximately one week.

Brad Lawrence began his employment as a Nevada Deputy State Treasurer on December 1, 2003. Prior to joining the State Treasurer's office, Mr. Lawrence was a consultant and worked for several political campaigns, including working for Sandra Tiffany's election campaigns between 1996 and 2003. Mr. Lawrence states that he has not received any compensation from Sandra Tiffany since joining the State Treasurer's office, and there is no evidence to indicate otherwise, nor is it suggested in this report. Sometime after joining the Treasurer's office, Mr. Lawrence was contacted by Tiffany. Tiffany explained to Mr. Lawrence that she was interested in introducing legislation in Nevada with regard to unclaimed property and she needed to research how other states handle their unclaimed property. Mr. Lawrence helped Tiffany arrange her visit to Pennsylvania and Texas' unclaimed property departments.

In late December of 2003, Tiffany traveled to both Pennsylvania and Texas in her capacity as Nevada State Senator. Tiffany met with representatives from the respective states and their unclaimed property departments in order to gather information about their auction procedures. Thereafter, Tiffany contacted the staff members that she had met with in Pennsylvania and Texas, and sought their help in forming Tiffany's private auction business.

In April of 2004, Tiffany traveled to California in her official capacity as Nevada State Senator and met with the state's unclaimed property staff and gathered information about California's online auction procedures.

During the time period between late 2003 and the latter part of 2004, Tiffany contacted numerous states and their unclaimed property departments to inquire about the procedures used by those states in the disposal of unclaimed and surplus property. (See Tab G).

On April 16, 2004 the Legislative Counsel Bureau ("LCB") issued an opinion letter to Tiffany based on her inquiry of whether a legislator could contract with a state agency. LCB concluded that Tiffany could contract with a state agency so long as she met the four requirements enumerated in NRS 218.605 and NRS 281.505. LCB also advised

Tiffany that she could seek an opinion from this Commission regarding the issue and how NRS Chapter 281 may apply. Tiffany did not request an advisory opinion from this Commission regarding this matter. (See Tab H).

In July of 2004, Stockdales began conducting online auctions for the City of North Las Vegas on a trial basis. No written contract was entered into between Stockdales and the City of North Las Vegas. Also in July of 2004, Tiffany submitted an unsolicited bid to State Purchasing for Stockdales' auction services. In August of 2004, Tiffany sent Treasurer Krolicki a letter introducing her auction business and requesting a meeting to discuss her services. (See Tab I). Thereafter, in October of 2004, negotiations began between Tiffany and State Purchasing for a contract to use Stockdales for online auctions of Nevada's unclaimed property and surplus vehicles and on February 14, 2005 Tiffany entered into a contract with State Purchasing for Stockdales' online auction services.

Tiffany introduced SB 55 on February 15, 2005. (See Tab E). SB 55 sought to allow a person who operates an advertising business to engage in advertising activities to assist a governmental entity in the sale of its vehicles without requiring the person to be licensed as a vehicle broker or dealer. As introduced, the bill would also allow the person with the advertising business to do business with a government entity without a contract and receive a percentage of the sales price of the vehicle, rather than a flat fee per vehicle listed and sold. SB 55 was defeated in the Assembly.

H. ANALYSIS

The investigation conducted with regard to this Request for Opinion revealed significant relevant issues and facts beyond those presented by the Requester. During the investigation of the initial allegations contained in the Request for Opinion, additional instances emerged which appeared to indicate a pattern of conduct exercised by the subject in which she likely used her position in government for personal or financial gain. Accordingly, pursuant to the provisions of NAC 281.189, these findings are presented for consideration by the panel.

Additionally, the Request for Opinion alleges violations of NRS 218.605. Although the Commission has no authority to hear complaints under this provision, should the Commission find that the subject has committed a willful violation of the Nevada Code of Ethical Standards and it believes such violation may also constitute an offense under NRS 218.605, pursuant to NRS 281.551 (8)⁶, the Commission shall refer the matter to the Attorney General for a determination of whether the matter warrants prosecution.

⁶ NRS 281.551(8) states: NRS 281.481 to 281.541, inclusive, do not abrogate or decrease the effect of the provisions of the Nevada Revised Statutes which define crimes or prescribe punishments with respect to the conduct of public officers or employees. If the Commission finds that a public officer or employee has committed a willful violation of this chapter which it believes may also constitute a criminal offense, the Commission shall refer the matter to the Attorney General or the district attorney, as appropriate, for a determination of whether a crime has been committed that warrants prosecution.

Allegations regarding NRS 281.505:

Subsection 1 of this provision prohibits a public officer from bidding on or entering into a contract between a governmental agency and any private business in which he has a significant pecuniary interest. However, subsection 4 of the provision provides an escape hatch from the strict prohibition under Subsection 1. Under subsection 4, an officer may bid on or enter into a contract with a governmental agency if *all* four of the following requirements are met: 1) If the contracting process is controlled by rules of open competitive bidding; 2) the sources of supply are limited; 3) he has not taken part in developing the contract plans or specifications; and 4) he will not be personally involved in opening, considering or accepting offers. The facts in this Request for Opinion are applied to these requirements and analyzed below:

As to the State Purchasing contract:

1. Contracting Process Controlled by Rules of Open Competitive Bidding.

As to the contract with State Purchasing, Tiffany argues that her contract was not controlled by the state's rules on open and competitive bidding because there is a Commission opinion⁷ on point where the Commission interpreted this requirement to be inapplicable if there is another statute that otherwise authorizes the contract without advertising for bids.

In *Harris*, the Commission found no violation where the sheriff of Elko County had entered into a no-bid contract with the county for the sheriff's personal pest control service. The Commission concluded that Elko County was authorized by statute to enter into the contract. At the time of the opinion, NRS 332.035 provided that counties with a population less than 100,000 and annual expenditures of less than one million dollars could enter into a contract without advertising if the amount of the contract was \$10,000 or less.

Under Tiffany's contract with State Purchasing, the rules of open competitive bidding are governed by Chapter 333 of NRS and NAC. Tiffany's contract was entered into pursuant to NRS 281.173 as a contract for the services of an independent contractor.

NRS 281.173 states in part:

“...heads of departments...may contract for the services of persons as independent contractors. *Except as otherwise provided by specific statute*, each contract for services must be awarded pursuant to the provisions of Chapter 333 of NRS.” (Emphasis added.)

The “specific statute” that Tiffany argues exempts her contract from the bidding requirements under Chapter 333 of NRS is NAC 333.150.

⁷ See *Matter of Harris*, NCOE Opinion No. 02-08 (Tab F).

NAC 333.150, Subsection 2, provides in part:

“Such a contract which by its nature is not adapted to be awarded by competitive selection, including without limitation, a contract for: (a) Services which may only be contracted from *a sole source as determined by the chief*; is not subject to the requirements of this chapter and chapter 333 of NRS for competitive selection.” (Emphasis added.)

Although the facts in the *Harris* opinion can be distinguished from the facts presented in this Request for Opinion, Tiffany makes a valid argument that *Harris* stands for the proposition that the rules of open and competitive bidding do not apply if there is a specific statute that otherwise authorizes the contract. In Tiffany’s case, NRS 281.173 together with NAC 333.150(2) provide relief from the rules of open and competitive bidding. However, NAC 333.150(2) begs the question whether Tiffany was indeed the sole source of supply.

2. Limited Source of Supply

Tiffany provides two arguments why she meets this requirement. First, Tiffany argues that this element is met because her business, Stockdales, was the only source of supply in this State for electronic auction services. Second, she claims that her business “was the only business in this State that had performed extensive research and developed knowledge that was nationwide in scope regarding the sale of surplus governmental property on the Internet.” (See Tab C).

This Commission has determined that each of the criteria set forth in NRS 218.605, which is the same set of four elements enumerated in NRS 281.505, must be analyzed in light of the specific facts of a specific contract.⁸

The scope of work under the contract between Tiffany and State Purchasing provides that Tiffany was to photograph vehicles, list/advertise the vehicles via a website and eBay, publish notice of the auction in a newspaper, provide copies of State ownership documents to buyers, provide a State contact to allow buyers to arrange for pickup of the vehicle, transfer original ownership documents from the State, and verify payment received by a third party escrow company. (See Tab K).

Documents provided by Tiffany to State Purchasing illustrate that she has conducted auctions of merchandise on eBay since 1999. Also, prior to entering into contract with State Purchasing, Tiffany had an arrangement with the City of North Las Vegas for the sale of its surplus vehicles through eBay. Based on this, there is no question as to whether Tiffany had experience in selling items through eBay and in processing the vehicles for pickup after a sale. However, this by itself does not mean that Tiffany was the only individual in the State of Nevada that could perform these services. Still, with regard to the State Purchasing contract, whether someone is considered the “sole source” of service is determined by the department chief. Greg Smith, Administrator for the

⁸ See, *Matter of Ron Cook*, NCOE Opinion No. 91-09 (Tab J).

Nevada Purchasing Division, determined that Tiffany was in fact the sole source of supply in the state for electronic auction services.

In an interview conducted by the Commission investigator, Mr. Smith stated that Tiffany had visited more than twenty states and gathered information about how those states conduct sales of state surplus assets. Tiffany was able to visit some of these states with the aid of Mr. Smith. Mr. Smith claims to have contacted state purchasing staff and arranged for Tiffany to visit in her capacity as Senator. Mr. Smith was unaware of anyone else in the business that possessed the knowledge of state surplus property disposal like Tiffany. It was Mr. Smith's position that doing a pilot auction program without a Request For Proposal ("RFP") was in the best interest of the State.

Tiffany's first argument that Stockdales was the only source of supply in the State for electronic auction services is questionable, considering that the services provided by Stockdales, based on the contract scope of work, appear to be services that could have been provided by other auction houses that regularly do this type of work. The only difference would be that Stockdales would conduct the auctions via eBay instead of a live auction.

As to Tiffany's second argument that Stockdales was the only business in this State that had performed extensive research and developed special knowledge on governmental property and the Internet, although this claim may be true, Tiffany gathered the research and gained this knowledge primarily by visiting other states in her capacity as State Senator. The fact that Tiffany used this information gained in her official capacity to help her in her private business raises other ethical concerns. However, the question here is whether Tiffany was considered the sole source of supply. Mr. Smith had the discretion to determine this and concluded that Tiffany was the sole source. Therefore, this element under NRS 281.505(4) is met.

3. Not Take Part in Developing the Contract Plans or Specifications

Tiffany claims that she did not take part in developing the State Purchasing contract plans or specifications. Although Mr. Smith reported in his interview that Tiffany drafted the initial scope of work under the contract, the investigation in this case revealed that State Purchasing in concert with the Attorney General's office and the Department of Motor Vehicles ("DMV") prepared the contract so that the contract would be in compliance with DMV standards. Therefore, Tiffany likely did not take part in developing the plans and specifications.

4. Not Be Personally Involved in Opening, Considering or Accepting Offers.

Based on the information collected during the investigation, it does not appear that Tiffany was personally involved in opening, considering or accepting offers with regard to her contract with State Purchasing.

As to the City of North Las Vegas contract:

With regard to the oral contract that Tiffany had with the City of North Las Vegas, Tiffany argues that the bidding requirement under NRS 281.505 is inapplicable because another specific statute, specifically NRS 332.039 or 332.115 authorizes the award of the contract without the competitive bidding process.

During a telephonic interview with City of North Las Vegas Purchasing Manager Dwight Rawlinson, Mr. Rawlinson admitted that the oral contract the city had with Stockdales was not an issue of “sole source” of supply. Instead, Mr. Rawlinson stated that it was a question of discretion and under NRS Chapter 332⁹ he had discretion to enter into a contract for services with Stockdales without advertising for bids.

When applying the criteria set forth in NRS 281.505(4) to the facts under Tiffany’s North Las Vegas contract, the criteria is met. First, the North Las Vegas contract was not controlled by the rules of open competitive bidding. Under NRS 332.039 Mr. Rawlinson had discretion to enter into a contract without advertising for bids since it did not exceed \$25,000. Second, Mr. Rawlinson admitted that Tiffany’s online auction services were not considered a sole source. Rather, it was a matter of discretion. Further, as to whether Tiffany took part in developing the contract plans or specifications, it does not appear that she did. Finally, there is no evidence that Tiffany was involved in opening, considering or accepting offers.

Based on the analysis above, with regard to both the State Purchasing contract and the City of North Las Vegas contract, Tiffany likely met all of the requirements enumerated under NRS 281.505(4) that would allow her to enter into a contract with government entities.

Based on the above investigative activities and analysis, sufficient credible evidence does not exist for the panel to recommend the full Commission hold a hearing and render an opinion regarding whether Tiffany violated NRS 281.505.

Allegations regarding NRS 281.481(2):

This provision prohibits a public officer from “using his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any

⁹ NRS 332.039 Advertisements or requests for bid on contract, states:

1. Except as otherwise provided by specific statute:

(a) A governing body or its authorized representative shall advertise all contracts for which the estimated amount required to perform the contract exceeds \$25,000.

(b) A governing body or its authorized representative may enter into a contract of any nature without advertising if the estimated amount required to perform the contract is \$25,000 or less.

(c) If the estimated amount required to perform the contract is more than \$10,000 but not more than \$25,000, requests for bids must be submitted by the governing body or its authorized representative to two or more persons capable of performing the contract, if available. The governing body or its authorized representative shall maintain a record of all requests for bids and all bids received for the contract for at least 7 years after the date of execution of the contract.

business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person.”

The Commission, in *Matter of Douglas E. Glenn*, NCOE Opinion No. 01-15, determined that to find a violation under this provision, a showing of intent by the public officer is required:

“On its face, NRS 281.481, Subsection 2 reasonably appears to require the Commission to find by a preponderance of the evidence an intention by a public officer to secure or grant a benefit by using his position in government before the Commission may declare the public officer has violated the statute.”¹⁰

1. As to SB 55

Requester alleges that Tiffany used her position as State Senator, in violation of NRS 281.481(2), to attempt to change the law to benefit her by introducing SB 55.

As introduced, the bill would allow a person with an advertising business to do business with a government entity without a contract and receive a percentage of the sales price of the vehicle, rather than a flat fee per vehicle listed and sold. If passed, SB 55 would make it legal for Tiffany to sell vehicles without being licensed as a broker or dealer.

Tiffany responds that Subsection 7 of NRS 281.501 specifically allows her to introduce legislation that may benefit her or her private business. It is true that NRS 281.501 does not prohibit a member of the legislative branch from requesting or introducing a legislative measure. However, a legislator needs to disclose his interests and if the benefit accruing to him is greater than that accruing to any other member of the profession, the legislator needs to abstain from the issue. The legislative declaration that precedes the Nevada Ethics in Government Law provides:

NRS 281.421 Legislative declaration and findings.

* * * * *

“ 2. The Legislature finds that:

(a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.

(b) To enhance the people’s faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

(c) Members of the Legislature serve as “citizen Legislators” who have other occupations and business interests. Each Legislator has particular

¹⁰ See, *Matter of Douglas E. Glenn*, NCOE Opinion No. 01-15.

philosophies and perspectives that are necessarily influenced by the life experiences of that Legislator, including, without limitation, professional, family and business experiences. Our system assumes that Legislators will contribute those philosophies and perspectives to the debate over issues with which the Legislature is confronted. *The law concerning ethics in government is not intended to require a member of the Legislature to abstain on issues which might affect his interests, provided those interests are properly disclosed and that the benefit or detriment accruing to him is not greater than that accruing to any other member of the general business, profession, occupation or group.*” (Emphasis added.)

The question here is twofold. First is whether Tiffany properly disclosed her interests and whether Tiffany would accrue a greater benefit from the passage of her measure than would accrue to any other member of the advertising profession, pursuant to NRS 281.421. Second, is whether Tiffany intended to secure or grant a benefit by introducing and advocating for SB 55, in violation of NRS 281.481(2).

Tiffany introduced SB 55 on February 15, 2005. On March 1, 2005 and again on March 10, 2005, the Senate Committee on Transportation and Homeland Security heard SB 55. At the first meeting, Tiffany disclosed the fact that she was an independent contractor working with a city to auction its used vehicles and the law prohibited her from selling the vehicles without the proper license. At the March 10, 2005 meeting Tiffany read into the record a disclosure statement prepared by LCB which states the nature of Tiffany’s private business, what SB 55 strived to do, and that because the resulting benefit or detriment from SB 55 accruing to Tiffany or her business would not be greater than that accruing to any other person who operates such a business, that Tiffany was authorized to advocate the passage of the bill. It appears that Tiffany properly disclosed her interests.

Whether or not Tiffany stood to benefit more than any other advertising business such as hers with the passage of SB 55 may require further inquiry of Tiffany. The investigation conducted by Commission staff revealed that Tiffany’s company was not the only company doing or wanting to do online auctions of government vehicles. SB 55 would allow advertising businesses, such as Tiffany’s, to do business with Nevada governmental entities by selling its government vehicles without a broker or dealer license. Therefore, the passage of SB 55 would give the opportunity to all advertising businesses such as Tiffany’s. Based on this, Tiffany did not stand to benefit more than anyone else in the advertising business group. However, it would appear that at first, Tiffany would benefit more because Tiffany had a contract with Nevada Purchasing for the sale of government vehicles. It is likely that with this contract, all State of Nevada entities could attach to the contract and would not be subject to the competitive bidding process. (See Tab M). Thus, excluding all other advertising businesses that want to compete with Tiffany’s. Also, Tiffany had already made proposals to several governmental entities for her services, including, the City of North Las Vegas, City of Las Vegas, City of Henderson, Clark County and Nye County. Based on the information gathered, it appears that the benefit accruing to Tiffany, with the passage of SB 55, is not

greater than that accruing to any other member of the advertising group. However, the Commission may want to inquire further.

Under NRS 281.481(2), Tiffany is prohibited from intending to secure or grant herself or her business an unwarranted benefit by using her position in government. Here, the facts show that Tiffany intended to benefit from the passage of SB 55. However, SB 55 was written to benefit not just her company but advertising companies such as Tiffany's wanting to sell vehicles on behalf of governmental entities. The threshold question is whether Tiffany used her position in government to benefit and it does not appear that she did.

As a member of a citizen legislature, Tiffany comes to her official position with knowledge and experience from her life outside of the legislature. Tiffany had her advertising business prior to the introduction of SB 55 and had been conducting online auctions for years. Tiffany is not prohibited from introducing and advocating measures on issues that affect her personal interests, unless she stands to gain more than anyone else in her group. As analyzed above, it does not appear that Tiffany intended for herself and her company only to benefit from SB 55.

2. As to Tiffany's visit with the Pennsylvania Treasury Department

On December 22, 2003 Tiffany visited Pennsylvania's Treasury Department Bureau of Unclaimed Property in an official State Senator capacity to gather information about Pennsylvania's eBay auctions operation. Tiffany met with Division Manager, Lori Hetrick.

In a telephone interview and in a written statement by Ms. Hetrick (see Tab M), she states that Tiffany continued to communicate with her well after Tiffany's visit. However, the information sought by Tiffany was no longer to help the State of Nevada with its auction process, rather, Tiffany sought information from Ms. Hetrick to use in her personal online auction business. Ms. Hetrick grew uncomfortable with the conversations with Tiffany and sought advice from her chief counsel. At one point, Tiffany offered Ms. Hetrick employment with Stockdales, Ms. Hetrick declined and soon after ceased all communication with Tiffany. The last communication Ms. Hetrick received from Tiffany was in January of 2005 when a person identifying herself as "an employee in the senator's office" called to see if Ms. Hetrick was still employed with the Treasury.

In light of the evidence, it appears that Tiffany intended to use her position in government to secure an unwarranted advantage for herself and Stockdales. At first, it may appear that Tiffany traveled to Pennsylvania in an effort to help the State of Nevada with its Internet auction procedures since Deputy State Treasurer Brad Lawrence arranged for the meeting with Pennsylvania. Also, in a letter to Ms. Hetrick, Tiffany claims to have shared the information she gathered from Pennsylvania with a Nevada Deputy State Treasurer. (See Tab N). However, during a telephone interview with Senior Deputy State Treasurer Pat Foley, he stated that Tiffany did not share her findings with Nevada's

Unclaimed Property Division. No evidence exists that Tiffany gave Nevada's Unclaimed Property Division information she gained through her visit with Pennsylvania's Treasury Department, separate from a presentation she made to the Nevada Treasurer's office regarding Stockdales. Further, Ms. Hetrick questioned the need for Tiffany's visit since Ms. Hetrick had worked with the Nevada Treasurer's office to rectify the problems it had with its 2003 eBay auction. Therefore, Tiffany's visit to Pennsylvania for Nevada's benefit is questionable.

All the evidence gathered indicates that Tiffany intended to use her official position to gather information from Pennsylvania and to use the information gained in order to seek contracts on behalf of Stockdales, including a contract with State Purchasing. Stockdales likely benefited from Tiffany's conduct because she gathered information on how to run an online auction of unclaimed/surplus property from an entity that had long been successful at such auctions. Tiffany was able to gather this information because she sought it in her capacity as a Nevada State Senator and Pennsylvania was willing to help another state in their eBay endeavor. It is highly unlikely that Pennsylvania would have opened its doors and given Tiffany the attention it did had Tiffany visited in a private capacity as owner of an online auction business. Tiffany was then able to take the information she gained from Pennsylvania and use it when soliciting for contracts, specifically with State Purchasing. Greg Smith determined that Tiffany was the sole source of supply of services because she had conducted extensive research on numerous states and their online auctions of unclaimed/surplus property. (See Tab G). The information that Tiffany received from this particular state, Pennsylvania, was received in her official capacity and she then used it to benefit her and her business.

3. As to Tiffany's visit with Texas Comptroller's Unclaimed Property Division:

According to the interview conducted with Leywon Boatner, Area Manager for the Texas Comptroller, and consistent with his affidavit (see Tab O), Mr. Lawrence from the Nevada State Treasurer's office called him and requested that Tiffany come to Texas and spend some time at their facility in order to gather information as to the operations of their unclaimed property program. Mr. Boatner understood that Tiffany would be making a stop in Texas on her way back from a trip to Pennsylvania.

Tiffany toured the Texas facility in late December of 2003 and reviewed the operations of Texas' unclaimed property program with Mr. Boatner and Mr. Marvin Palla, Supervisor of the Safebox Program. Tiffany also met with Jackie Schroeter who is in charge of Texas' Safebox Operations. Ms. Schroeter went over the online sales procedures with Ms. Tiffany. Ms. Schroeter stated in an interview and in her affidavit (see Tab P), that she believed Tiffany was at the Texas facility on behalf of the State of Nevada in order to learn how Texas does eBay auctions so that Nevada could implement Texas' procedures. Ms. Schroeter stated that Tiffany had telephoned her at least five times after her 2003 visit. During one of these conversations, Tiffany expressed her interest in doing an eBay auction with other states and government agencies through her private online auction

business. Ms. Schroeter claims that during subsequent calls to her, Tiffany asked her to help get Stockdales up and running and to recruit other states' business. At that point, Ms. Schroeter stated that she consulted with her supervisor as to whether she could continue to give Tiffany advice on online auctions since it was apparent that she was using this information for her private use. Ms. Schroeter stopped giving Tiffany advice and after declining a job offer from Tiffany to come to Nevada and work for Stockdales, the telephone calls ceased.

It appears that Tiffany intended to use her position in government to secure an unwarranted advantage for herself and Stockdales. Tiffany traveled to Texas and met with Ms. Schroeter and her colleagues for the purpose of gathering information that would help her in her private business. Tiffany was able to gather auction procedures information because she sought the information in her capacity as a Nevada State Senator and Texas was willing to help Nevada with its auction operations. Further, Stockdales likely benefited from Tiffany's conduct because she gathered information on how to run an online auction of unclaimed property from Texas, a state that claims to have been successfully doing eBay auctions of its unclaimed property longer than any other state. Tiffany was then able to take the information she gained from Texas and use it when soliciting State Purchasing and other states.

It is highly unlikely that Texas would have opened its doors and given Tiffany the attention it did had Tiffany visited in a private capacity as owner of an online auction business. In fact, once Texas learned that Tiffany was using the advice given to her for her private endeavor, it ceased advising her.

4. As to Tiffany's visit and contact with California State Controller Bureau of Unclaimed Property:

According to documents received from California's Bureau of Unclaimed Property, telephonic interviews with members of its staff, and affidavits from these individuals, Tiffany visited California's Bureau of Unclaimed Property on April 29, 2004. (See Tab Q). The documentation received provides that Tiffany was considering carrying legislation regarding online auctions in Nevada, gathering information to help Nevada with its online auction procedures, and was interested in California's experience and results.

Tiffany met with now retired Compliance Officer George DeLeon in her capacity as State Senator seeking information for Nevada's benefit. However, during his interview, Mr. DeLeon stated that he thought it odd that during Tiffany's visit she offered him employment with her private auction company.

In May 2004, Mr. DeLeon forwarded a list of questions regarding California's auction procedures from Tiffany to Mr. Ted Irwin, Associate Governmental Program Analyst for the California Controller. Mr. Irwin provided answers to Tiffany's questionnaire. As

part of his duties, Mr. Irwin prepares RFPs for online auctions and is also the contract manager and coordinator for the awarded contracts.

In November of 2004, Mr. Irwin spoke with Tiffany by telephone. He claims Tiffany told him that she was researching marketing methods for unclaimed property found in Nevada's safe deposit boxes. She questioned Mr. Irwin extensively for approximately two hours about California's requirements for an RFP for online auction contracts. Mr. Irwin provided Tiffany detailed program information that would not normally be provided to other contract bidders. Mr. Irwin stated that the information was given to Tiffany because it is California's policy to assist other states with their safe deposit programs. At the end of this conversation with Mr. Irwin, Tiffany asked for Stockdales to be placed on the bidders list for future RFPs. Mr. Irwin provides in his affidavit (see Tab R) "it is my opinion that Senator Tiffany clearly misrepresented her intentions, pretending to be gathering information on Nevada's behalf...[b]ecause of Senator Tiffany's position she was provided with information that gave her an unfair bidding advantage in preparing and submitting an online auction proposal."

Based on the above, Tiffany intended to use her position in government to secure an unwarranted advantage for herself and Stockdales. First, Tiffany visited California in her official capacity and represented that she was gathering information on behalf of Nevada to better its online auction procedures. However, Tiffany used the information she gained for Stockdale's benefit. In fact, Tiffany used the questionnaire completed by Mr. Irwin in her own proposal to State Purchasing during her contract negotiations. (See Tab S). Tiffany was able to gather this information because she sought it in her capacity as a Nevada State Senator. It is highly unlikely that California would have opened its doors and given Tiffany the attention it did had Tiffany visited in a private capacity as owner of an online auction business. Mr. Irwin even admits that he would not have given Tiffany the information he did had he known she was interested in a contract. Second, Tiffany intended to use her official position to secure an advantage for herself and Stockdales when she telephoned the one individual at the Controller's office in charge of preparing the RFPs for auctions and after getting information from him about the RFP process that would normally not be given to other bidders, Tiffany requested to be put on the bidders list.

Sufficient credible evidence exists for the panel to recommend the full Commission hold a hearing and render an opinion regarding whether Tiffany violated NRS 281.481(2) as it relates to her visit with Pennsylvania, Texas and California. Only the full commission has the authority to determine if Tiffany's conduct in relation to these issues rises to the level of a violation of state law.

5. As to Tiffany's visit with Washington Department of Revenue Unclaimed Property Section:

In an interview with Stuart Thronson, Assistant Director of Special Programs for Washington and in his affidavit (see Tab T), Mr. Thronson states that sometime during

the summer of 2004 he received a telephone call from Senator Tiffany who was in Seattle for a legislators' meeting. Tiffany asked Mr. Thronson for a meeting to be arranged in order to discuss state unclaimed property. Mr. Thronson promptly arranged for a meeting in his office.

When Tiffany arrived, she presented Mr. Thronson with her business card, that of Nevada State Senator. Mr. Thronson stated that he was under the impression that Tiffany was there to discuss Nevada's unclaimed property issues and laws. Tiffany then presented a proposal for Stockdales. Mr. Thronson explained to Tiffany that Washington law prohibited hiring out of state auctioneers. According to Mr. Thronson, Tiffany at that point offered to speak to Washington legislators to propose changing this law.

Based on Mr. Thronson's statements, Tiffany intended to use her position in government to secure an unwarranted advantage for herself and Stockdales. This is evidenced by Tiffany's conduct. She first presented herself as a Nevada State Senator, who wished to speak to Mr. Thronson about Nevada's unclaimed property. Then, when she arrived at Mr. Thronson's office, Tiffany proceeded to make a presentation about her private business and solicit for Washington's auction business.

Stockdales stood to benefit from Tiffany's conduct. Mr. Thronson arranged a meeting with Tiffany at a moment's notice since she was in Seattle. Had Tiffany disclosed the real reason why she was setting up the meeting, to present Stockdales, Mr. Thronson likely would have advised her about Washington's law prohibiting hiring out of state auctioneers. Further, it is likely that had Tiffany, at the outset, presented herself as an online auctioneer soliciting for Washington's business, Mr. Thronson would likely not have been as accommodating and thus, by using her senator status, Tiffany had an advantage.

Sufficient credible evidence exists for the panel to recommend the full Commission hold a hearing and render an opinion regarding whether Tiffany violated NRS 281.481(2) as it relates to her visit with Washington. Only the full commission has the authority to determine if Tiffany's conduct in relation to these issues rises to the level of a violation of state law.

6. As to Tiffany's visit with Utah's Surplus Property Manager

Surplus Property Manager Dave Regan stated in a telephone interview and in his affidavit (see Tab U) that he had met with Tiffany in his office. He believed that she was there in an official capacity, on behalf of the state of Nevada, in order to gain information that may be useful for Nevada in its method of disposing of surplus property. However, he stated that at the end of their meeting Tiffany told him about Stockdales and solicited for Utah's online auction business. Mr. Regan explained that although he was not influenced by her senator status nor did he feel pressured by her, he felt that Tiffany had arranged to meet with him, in her official capacity, under the premise of gathering information for the State of Nevada when in fact, the meeting was to introduce her private business.

It appears that Tiffany intended to use her position in government to secure an unwarranted advantage for herself and Stockdales. Mr. Regan states that he felt Tiffany had arranged to meet with him under the premise of gathering information for Nevada's benefit, however, once there, Tiffany used the meeting to introduce her private company and to solicit for Utah's business. Stockdales stood to benefit from Tiffany's conduct because it is likely that Tiffany may not have gotten the opportunity to meet with Utah's Surplus Property Manager in order to introduce her private online auction business had she not used her title and requested a meeting to discuss Nevada's surplus property.

Sufficient credible evidence exists for the panel to recommend the full Commission hold a hearing and render an opinion regarding whether Tiffany violated NRS 281.481(2) as it relates to her visit with Utah. Only the full commission has the authority to determine if Tiffany's conduct in relation to these issues rises to the level of a violation of state law.

7. As to Tiffany's contact with Idaho's Administrator for Unclaimed Property

During a telephone interview with Ron Crouch, Administrator for Unclaimed Property for the State of Idaho and in his affidavit (see Tab V), Mr. Crouch stated that the initial contact he had with Tiffany was when she telephoned him and presented that she was a Nevada State Senator in order to start a conversation that led to her introduction of Stockdales and her solicitation for Idaho's auction business. Prior to this conversation with Tiffany, Mr. Crouch did not know of nor had ever met her in any capacity. Mr. Crouch indicated that whenever he gets a call from an official, he automatically pays attention. He recalled that with Tiffany, this was the case. Mr. Crouch felt that Tiffany had used her Senator status as an "in" to the conversation that ultimately resulted in her offering Stockdales' services.

It appears that Tiffany intended to use her position in government to secure an unwarranted advantage for herself and Stockdales. According to Mr. Crouch, the first contact he ever had with Tiffany was when she telephoned him and presented herself as a Nevada State Senator. It is Mr. Crouch's impression that Tiffany used her official title as an in to a conversation that led to her introduction of Stockdales, and her solicitation for Idaho's business. Therefore, in the case of Idaho, Tiffany using her official title was likely an advantage for Stockdales because had any other Nevada online auction company telephoned Mr. Crouch for the same purpose, Mr. Crouch would likely not have responded in the same manner.

Sufficient credible evidence exists for the panel to recommend the full Commission hold a hearing and render an opinion regarding whether Tiffany violated NRS 281.481(2) as it relates to her contact with Idaho. Only the full commission has the authority to determine if Tiffany's conduct in relation to these issues rises to the level of a violation of state law.

8. As to Tiffany's contact with Colorado's Unclaimed Property Administrator

Unclaimed Property Administrator Patty White stated in a telephone interview and in her affidavit (see Tab W) that she has communicated with Tiffany on numerous occasions. She recalls that during the first communication she had with her, Tiffany had explained that she was a Nevada State Senator trying to learn more about what other states did with unclaimed property and that Tiffany was on a committee that oversees unclaimed property. Later in the conversation, Tiffany presented Stockdales to Ms. White and solicited for Colorado's business.

It appears that Tiffany may have intended to use her position in government to secure an unwarranted advantage for herself and Stockdales. Tiffany first presented herself to Ms. White as a Nevada State Senator and although Tiffany related to Ms. White at first that Tiffany was on a committee that oversees unclaimed property and was investigating what other states do in an effort to help Nevada with its unclaimed property, Tiffany concluded her conversation with the introduction of Stockdales and solicited for Colorado's business. Tiffany's conduct likely benefited Stockdales because Tiffany was able to converse with Ms. White under the premise that she was collecting information for Nevada. Someone in Tiffany's position would have then been able to gather information about how Colorado handles its unclaimed property, its procedures for RFPs, and whether Colorado had the need for an online auctioneer. At the conclusion, such a person would be in a better position to introduce her auction company than if the person had contacted Colorado in her private capacity.

Sufficient credible evidence exists for the panel to recommend the full Commission hold a hearing and render an opinion regarding whether Tiffany violated NRS 281.481(2) as it relates to her contact with Colorado. Only the full commission has the authority to determine if Tiffany's conduct in relation to these issues rises to the level of a violation of state law.

9. As to Tiffany's contact with Nebraska's Director of Unclaimed Property

Jim Burke, Director of Unclaimed Property for the State of Nebraska was interviewed by telephone. During his interview and subsequently in his affidavit (see Tab X), Mr. Burke revealed that he had a number of conversations with Tiffany. He reported that initially, Tiffany had contacted him in her capacity as a Nevada State Senator to inquire as to how Nebraska deals with its unclaimed property. Tiffany later introduced the fact that she had a private online auction business and solicited him for Nebraska's business.

It appears that Tiffany intended to use her position in government to secure an unwarranted advantage for herself and Stockdales. Tiffany contacted Mr. Burke in her capacity as Nevada State Senator to inquire as to how Nebraska handles its unclaimed property. Under the impression that Tiffany was gathering information for Nevada's use, Mr. Burke may have disclosed information that he would not have likely disclosed had he

known Tiffany was a private auctioneer solicitor. During her initial conversation with Mr. Burke, Tiffany was in a position to gather information about how Nebraska handles its unclaimed property, its procedures for RFPs, and whether Nebraska had the need for an online auctioneer. Tiffany was likely in a better position, having acquired information from Mr. Burke, to introduce her auction company than if she had contacted Nebraska in her private capacity.

Sufficient credible evidence exists for the panel to recommend the full Commission hold a hearing and render an opinion regarding whether Tiffany violated NRS 281.481(2) as it relates to her contact with Nebraska. Only the full commission has the authority to determine if Tiffany's conduct in relation to these issues rises to the level of a violation of state law.

Consideration of NRS 281.481(5) and NRS 281.481(10):

In addition to the above allegations, under NAC 281.189 the Executive Director may investigate relevant issues and facts beyond those presented in an ethics complaint in determining her written recommendation of whether just and sufficient cause exists for the Commission to render an opinion on the ethics complaint.

NRS 281.481(5)

Under this provision, if a public officer "acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity."

Under the facts gathered in this investigation, Tiffany acquired information, through her public duties or relationships, which by practice is not readily available to people generally. It appears that Tiffany may have used the information she gained to further her pecuniary interests.

Tiffany may have received the aid of the Nevada Treasurer's office as well State Purchasing in arranging her visits to several states and their unclaimed/surplus property departments. Tiffany visited these states in her official capacity as Nevada State Senator. During these visits, Tiffany collected information about the procedures used by these states in the handling of unclaimed/surplus property and specifically, online auctions to dispose of property. It is likely that some of the information Tiffany obtained would, by practice, not be available to people generally. Tiffany used the information she gained from her official visits to other states in her negotiations for a contract with State Purchasing for Stockdales' online auction services. Further, Tiffany may have used the information she gained through her official capacity when she solicited the Nevada Treasurer and other states for their auction business.

Sufficient credible evidence exists for the panel to recommend the full Commission hold a hearing and render an opinion regarding whether Tiffany violated NRS 281.481(5).

Only the full commission has the authority to determine if Tiffany's conduct in relation to these issues rises to the level of a violation of state law.

NRS 281.481(10)

Under this provision, a public officer "shall not seek other employment or contracts through the use of his official position."

The investigation of this Request for Opinion revealed that Tiffany likely sought contracts for Stockdales through the use of her official position with at least six states. Tiffany, in her official capacity, inquired about California's requirements for an RFP for online auction contracts and then asked that Stockdales be placed on California's bidders list for future RFPs. Also, in her official capacity, Tiffany requested the Washington Assistant Director of Special Programs set up a meeting to discuss Nevada's unclaimed property but instead used the opportunity to introduce Stockdales and solicit for Washington's business. Similarly, in her official capacity, Tiffany met with Utah's Surplus Property Manager in order to introduce Stockdales and solicit business from Utah. Additionally, in her official capacity, Tiffany contacted Idaho's Administrator for Unclaimed Property, Colorado's Unclaimed Property Administrator, and Nebraska's Unclaimed Property Director and solicited them for business on behalf of Stockdales. Further, Tiffany represented that she is a Nevada State Senator in her communications soliciting on behalf of Stockdales that were received by other states. (See Exhibit Y).

Sufficient credible evidence exists for the panel to recommend the full Commission hold a hearing and render an opinion regarding whether Tiffany violated NRS 281.481(10). Only the full commission has the authority to determine if Tiffany's conduct in relation to these issues rises to the level of a violation of state law.

I. FURTHER CONSIDERATIONS

The Commission office did not receive a waiver from Tiffany of the timelines set forth in NRS 281.511(3) and NRS 281.511(4). However, Tiffany's legal counsel has been advised that their failure to comply with Commission's requests for records is deemed a waiver by Tiffany of the statutory timelines pursuant to NRS 281.475(4).

J. CONCLUSION:

The Executive Director, having delegated the investigation of this complaint in its entirety to the Commission's investigator pursuant to NRS 281.4635(1)(c) and NRS 281.4635(2)(c) and after reviewing the evidence gathered by the investigator hereby recommends the panel find just and sufficient cause exists for the Commission to hold a hearing and render an opinion regarding whether the subject violated:

- NRS 281.481(2) in eight (8) instances by the subject's conduct with:
 1. Staff in the Texas Comptroller's Unclaimed Property Division;
 2. Staff in the Pennsylvania Treasury Department;
 3. Staff in the California State Controller's Bureau of Unclaimed Property;
 4. Staff in the Washington Department of Revenue Unclaimed Property Section;
 5. Utah's Surplus Property Manager;
 6. Idaho's Administrator for Unclaimed Property;
 7. Colorado's Unclaimed Property Administrator; and
 8. Nebraska's Director of Unclaimed Property.

- NRS 281.481(5) in three (3) instances by the subject's conduct with:
 1. Nevada State Purchasing;
 2. The Nevada Treasurer's office; and
 3. Staff from California State Controller's Bureau of Unclaimed Property.

- NRS 281.481(10) in six (6) instances by the subject's conduct with:
 1. Staff in the California State Controller's Bureau of Unclaimed Property;
 2. Staff in the Washington Department of Revenue Unclaimed Property Section;
 3. Utah's Surplus Property Manager;
 4. Idaho's Administrator for Unclaimed Property;
 5. Colorado's Unclaimed Property Administrator; and
 6. Nebraska's Director of Unclaimed Property.

Additionally, the Executive Director, having delegated the investigation of this complaint in its entirety to the Commission's investigator pursuant to NRS 281.4635(1)(c) and NRS 281.4635(2)(c) and after reviewing the evidence gathered by the investigator hereby recommends the panel find just and sufficient cause *does not* exist for the Commission to hold a hearing and render an opinion regarding whether the subject violated NRS 281.505 and further, that the allegations concerning this provision be dismissed.

DATED: February 27, 2006

Stacy M. Woodbury
STACY M. WOODBURY, MPA
EXECUTIVE DIRECTOR

BY: Adriana G. Fralick
ADRIANA G. FRALICK, ESQ.
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